

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

APR - 9 2009

Clerk, U.S. District and  
Bankruptcy Courts

DR. ROGER BLACKWELL, :  
Register #66376061, Box 1000 :  
Federal Correctional Institute :  
446 Greenbag Road :  
Morganstown, PA 26501 :  
:  
Plaintiff :

v. :

FEDERAL BUREAU OF INVESTIGATION, :  
935 Pennsylvania Avenue, N.W. :  
Washington, D.C. 20535 :

and :

U.S. DEPARTMENT OF JUSTICE, :  
10<sup>th</sup> and Constitution Ave., N.W. :  
Washington, D.C. 20530 :

Defendants :

Case: 1:09-cv-00661  
Assigned To : Collyer, Rosemary M.  
Assign. Date : 4/9/2009  
Description: FOIA/Privacy Act

COMPLAINT FOR INJUNCTIVE RELIEF  
[Freedom of Information Act, 5 U.S.C. § 552,  
et seq.; Privacy Act, 5 U.S.C. 552a, et seq.]

JURISDICTION AND PARTIES

1. Plaintiff Roger Blackwell (Blackwell) brings this action  
under the Freedom of Information Act ("the FOIA"), 5 U.S.C.  
§552, as amended, and the Privacy Act. 5"), and the Privacy Act,  
5 U.S.C. §552, as amended,

2. Blackwell is currently incarcerated in the Federal Correctional Institute at Morgantown, West Virginia, where he is serving a six-year sentence on charges that he violated insider trading laws. Blackwell contends that he was wrongly convicted of these charges. He seeks records pursuant to the Freedom of Information and Privacy Acts in order to establish that he was wrongly convicted and to clear his name.

3. Defendant DEPARTMENT OF JUSTICE (JUSTICE) is an agency of the United States and has possession and control of records requested by Blackwell which are the subject of this action.

5. Defendant FEDERAL BUREAU OF INVESTIGATION (FBI) is a component of the DEPARTMENT OF JUSTICE and has possession and control of records requested by Blackwell which are the subject of this action.

#### CAUSE OF ACTION

6. Plaintiff realleges the allegations set forth in paragraphs 1-5 above.

7. By letter dated April 19, 2007, Blackwell, through counsel, submitted a Freedom of Information Act request to FBI Headquarters seeking records relating to the case U.S. v. Blackwell, et al., No. CR 2-04-134, U.S. District Court, Southern District of Ohio. Specifically, Blackwell requested:

1. All records pertaining in any way to Alfred Stephan, Gertrude Stephan, and Tina Stephan Blackwell related to the above-referenced Blackwell case which was tried in the Federal District Court for the Southern District of Ohio in 2005, including, not limited to, all records which in any way relate to:

(a) any and all immunity agreements or proposed immunity agreements entered into or presented to any of these persons or their representatives;

(b) any and all interviews relating to Alfred Stephan, Gertrude Stephan, and Tina Stephan Blackwell, including any and all correspondence, notes, transcripts, statements, memoranda, reports, recordings, videotapes, emails, faxes, telephone messages, jottings, or any other form of record or communication pertaining thereto;

(c) All correspondence, notes, telephone messages, memoranda, tape recordings, reports or other form of records prior to the end of the trial (June 20, 2005) with or regarding Alfred Stephan, Gertrude Stephan and Tina Stephan Blackwell;

2. All notes, memoranda, reports, correspondence, transcripts, statements, tape recordings communications or any other form of record pertaining to John ("Jack") Kahl.

3. All records at any of these specified locations which reflect costs incurred in undertaking the referenced investigation and prosecution, including any breakdown of said costs.

4. Any and all records related in any way to any proposed settlement agreement, whether oral or written, which was in any form communicated to Dr. Blackwell's attorneys.

5. All search slips or other records reflecting the nature of the search conducted.

See Exhibit 1.

8. By letter dated August 27, 2007, Blackwell submitted to FBI Headquarters, through counsel, a Freedom of Information/Privacy Act request, sent via Certified Mail No. 7006 0100 0005 7589 7021, which requested the same categories of information that were set forth in his April 19, 2007 request. See Exhibit 2. His request specifically asked for records located at (1) FBI Headquarters, (2) the FBI's Cincinnati field office, and (3) the Columbus, Ohio residency.

9. Subsequently, by letter dated October 2, 2007, Blackwell, through counsel, submitted another FOIA/PA request specifically addressed to the FBI's Cincinnati field office. The substantive content of this request was the same as the earlier April 19 and August 27, 2007 requests. See Exhibit 3.

10. By form letter dated March 12, 2008, FBI Headquarters informed Blackwell that it was writing to advise him of the status of his request. See Exhibit 4.

11. By form letter dated May 15, 2008, FBI Headquarters informed Blackwell that it was writing to advise him of the status of his request. See Exhibit 5.

12. By form letter dated July 22, 2008, FBI Headquarters informed Blackwell that it was writing to advise him of the status of his request. See Exhibit 6.

13. By letter dated July 31, 2008, FBI Headquarters advised Blackwell that it had located approximately 3,319 pages potentially responsive to his request. See Exhibit 7.

14. By letter dated October 20, 2008, FBI Headquarters informed Blackwell that it was writing to advise him of the status of his request. See Exhibit 8.

15. By letter dated February 2, 2009, FBI Headquarters informed Blackwell that it was writing to advise him of the status of his request. See Exhibit 9.

16. By fax from counsel for Dr. Blackwell sent to the FBI on or about March 16, 2009, Dr. Blackwell offered to limit the scope of his request in exchange for the FBI's commitment to make a limited number of the records at issue available to him within 30 days. While the receipt of this communication was acknowledged by the FBI, it has made no substantive response to this proposal. The proposal has therefore been withdrawn.

17. No further correspondence has been exchanged between the parties.

18. Plaintiff has exhausted his administrative remedies.

19. Plaintiff has a legal right under the FOIA to obtain the information he seeks, and there is no legal basis for the FBI's denial of said right.

WHEREFORE, Plaintiff prays that this Court:

(1) order defendants to make the requested information promptly available to him;

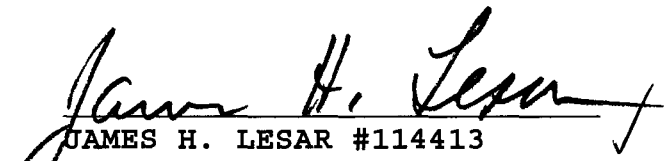
(2) order defendant's to conduct a thorough search for all responsive records;


(3) order defendants to provide plaintiff a Vaughn index inventorying all responsive records and itemizing and justifying all withholdings;

(4) expedite this action in every way pursuant to 5.U.S.C. § 552 and 28 U.S.C. § 1657;

(5) grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

  
JAMES H. LESAR #114413  
1003 K Street, N.W.  
Suite 640  
Washington, D.C. 20001  
Phone: (202) 393-1921

  
JULIA VORSINA GREENBERG  
New York Bar #388561773  
Empire State Buidling  
Suite 4400  
350 Fith Avenue  
New York City, N.W. 10118

Counsel for Plaintiff

Dated: April 9, 2009

1  
JAMES H. LESAR  
ATTORNEY AT LAW  
1003 K STREET, N.W., SUITE 640  
WASHINGTON, D.C. 20001  
TELEPHONE (202) 393-1921  
FAX (202) 393-7310

April 19, 2007

Mr. David M. Hardy  
Section Chief  
Record/Information Dissemination  
Section  
Records Management Division  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, N.W.  
Washington, D.C. 20535

Via email to: [julia.eichhorst@ic.fbi.gov](mailto:julia.eichhorst@ic.fbi.gov)

Re: Request of Dr. Roger Blackwell

Dear Mr. Hardy:

I represent Dr. Roger Blackwell. Dr. Blackwell is presently incarcerated in the Federal Correctional Institute at Morgantown, West Virginia. He was convicted on insider trading and related charges. The case, U.S. v. Blackwell, et al., was No. CR 2-04-134, U.S. District Court, Southern District of Ohio (hereafter referred to as "the Blackwell case").

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a, Dr. Blackwell requests the following records:

1. All records pertaining in any way to Alfred Stephan, Gertrude Stephan, and Tina Stephan Blackwell related to the above-referenced Blackwell case which was tried in the Federal District Court for the Southern District of Ohio in 2005, including, but not limited to, all records which in any way relate to:

Exhibit 1

**(a) any and all immunity agreements or proposed immunity agreements entered into or presented to any of these persons or their representatives;**

**(b) any and all interviews relating to Alfred Stephan, Gertrude Stephan, and Tina Stephan Blackwell, including any and all correspondence, notes, transcripts, statements, memoranda, reports, recordings, videotapes, emails, faxes, telephone messages, jottings, or any other form of record or communication pertaining thereto**

**c. All correspondence, notes, telephone messages, memoranda, tape recordings, reports or other form of records prior to the end of the trial (June 20, 2005) with or regarding Alfred Stephan, Gertrude Stephan and Tina Stephan Blackwell;**

**2. All notes, memoranda, reports,, correspondence, transcripts, statements, tape recordings communications or any other form of record pertaining to John ("Jack") Kahl**

**3. All records at any of these specified locations which reflect the costs incurred in undertaking the referenced investigation and prosecution, including any breakdowns of said costs.**

**4. Any and all records related in any way to any proposed settlement agreement, whether oral or written, which was in any form communicated to Dr. Blackwell's attorneys.**

**5. All search slips or other records reflecting the nature of the search conducted.**

**Please search the following locations for these records: (1) the Cincinnati, Ohio field office, (2) the Columbus, Ohio residency, and (3) FBI Headquarters. Please search both main files and cross-references at these locations for any responsive materials. Please also search your ELSUR indices at these locations. Your ELSUR search should include not only references that the subjects of this request are the subject of, but any "mentions" or "overhears" as well. Finally, please also search under all logical name variations (all "buildups and breakdowns") as well as under any known aliases or nicknames.**



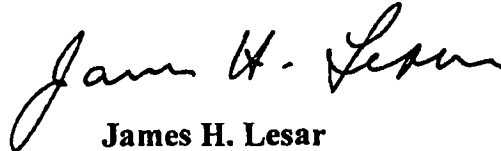
**Dr. Blackwell requests that these records be provided to him in searchable .pdf format.**

**Dr. Blackwell will pay the copying charges for these records.**

**A privacy waiver authorizing you to release records pertaining to Dr. Blackwell to me is attached.**

**Given the fact that we have provided you with the specific Criminal case number of the case to which the records sought relate, I believe you should not have any difficulty searching for the responsive records without the need for any further identifying information of the subjects of the request. Mr. Blackwell's identifying information is, of course, given in his privacy waiver, which is attached. Additionally, I am presently able to provide you with the birth date of John J. "Jake" Kahl, which is September 20, 1940.**

**Sincerely yours,**

A handwritten signature in black ink, appearing to read "James H. Lesar". The signature is fluid and cursive, with the first name "James" being the most prominent part.

**James H. Lesar**

**AUTHORIZATION AND PRIVACY WAIVER**

I, Roger Dale Blackwell, declare and say as follows:

1. I was born on the 2<sup>th</sup> day of August, 1940, at Anniston, Ala, Missouri.

2. My social security number is 488-40-8488

3. I currently reside at the Morgantown FCI in Morgantown, West Virginia. I previously resided at 1738 Fishinger Road, in Columbus, Ohio.

4. I hereby authorize any agency of the United States Government to release to my attorney, Mr. James E. Lesar, 10003 K Street, N.W., Suite 640, Washington, D.C. 20001, any and all records pertaining to me which he has requested on my behalf. Insofar as any release to Mr. Lesar is concerned, I waive any and all privacy rights which I have in said records.

5. I am the person identified in the preceding paragraphs and the signature subscribed below is my signature.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28<sup>th</sup> day of November, 2006.

*Roger Dale Blackwell*  
ROGER DALE BLACKWELL

JAMES H. LESAR  
ATTORNEY AT LAW  
1003 K STREET, N.W., SUITE 640  
WASHINGTON, D.C. 20001  
TELEPHONE (202) 393-1921  
FAX (202) 393-7310

August 27, 2007

**FREEDOM OF INFORMATION ACT REQUEST**

Mr. David M. Hardy  
Section Chief  
Record/Information Dissemination  
Section  
Washington, D.C. 20530

**VIA CERTIFIED MAIL NO.  
7006 0100 0005 7589 7021**

Re: Request of Dr. Roger Blackwell

Dear Mr. Hardy:

I represent Dr. Roger Blackwell. Dr. Blackwell is presently incarcerated in the Federal Correctional Institute at Morgantown, West Virginia. He was convicted on insider trading and related charges.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a, Dr. Blackwell requests the following records:

1. All records pertaining in any way to Alfred Stephan, Gertrude Stephan, and Tina Stephan Blackwell relevant to the case U.S. v. Blackwell, et al., which was tried in the Federal District Court for the Southern District of Ohio in 2005, including, but not limited to, all records which in any way relate to:

(a) any and all immunity agreements or proposed immunity agreements entered into by or presented to any of these persons or their representatives;

(b) Any and all interviews relating to Alfred Stephan, Gertrude Stephan, or Tina Stephan Blackwell, including any and all correspondence, notes, transcripts, statements, memoranda, reports, audio or video tapes, emails, faxes, telephone messages, jottings, or any other form of record or communication pertaining thereto;

(c) All correspondence, notes, telephone messages, memoranda, tape recordings, reports or other form of records prior to the end of the trial (June 20, 2005) with or regarding Alfred Stephan, Gertrude Stephan or Tina Stephan Blackwell.

Exhibit 2

2. All notes, memoranda, reports, correspondence, transcripts, statements, tape recordings, communications or any other form of record pertaining to John ("Jack") Kahl.

3. All records at any of these specified locations (Headquarters, Cincinnati and other appropriate locations) which reflect costs incurred in undertaking the referenced investigation and prosecution, including any breakdowns of said costs.

4. Any and all records related in any way to any proposed settlement agreement, whether oral or written, which was in any form communicated to Dr. Blackwell's attorneys.

5. All search slips or other records reflecting the nature of the searches conducted in response to the above requests.

Please search the following locations for these records: (1) the Cincinnati, Ohio field office; the Columbus, Ohio residency; and (3) FBI Headquarters. Please search both main files and cross-references at these locations for any responsive materials. Please also search your ELSUR indices at these locations. Your ELSUR search should include not only references that the subjects of this request were the subject of, but any "mentions" or "overhears" as well. Finally, please also search under all logical name variations (all "buildups and breakdowns"), as well as under any known aliases or nicknames.

Dr. Blackwell requests that these records be produced to him in .pdf format.

Dr. Blackwell will pay the copying charges for these records.

A privacy waiver authorizing you to release records pertaining to Dr. Blackwell to me is attached.

Given the fact that we have provided you with the specific criminal case number of the case to which the records sought relate, I believe that you should not have any difficulty searching for responsive records without the need for any further identifying information of the subjects of this request. Mr. Blackwell's identifying information is, of course, set forth in his attached privacy waiver. Additionally, I am presently able to provide you with the date of birth for John J. ("Jake") Kahl, which is September 20, 1940.

Dr. Blackwell's request includes records pertaining to third parties. I understand that you take the position that in order to obtain such materials we must show that the public interest in them overrides the privacy interest. Without question, this is the case.

There is a strong public interest in these materials because they will show the activities and operations of government agencies regarding a controversial prosecution of a highly regarded educator and businessman on insider stock trading charges even though he personally received no profit from such trading, and in circumstances where (a) his wife, who testified against him at his trial the day after she agreed to a \$1,000,000 divorce settlement against him, did so to save her parents from prosecution by the SEC, (b) his wife's parents, who had previously told investigators that Dr. Blackwell did not provide them an insider tip, left the U.S. at the time of his trial on an European "vacation," thus avoiding being called as witnesses on his behalf, and (c) the prosecution used immunity from prosecution agreements to procure testimony against him. Whether the government's tactics led to convicting an innocent man while allowing guilty parties to escape punishment, whether its tactics were fair and objective or an abuse of prosecutorial power, whether its pursuit of Dr. Blackwell was hugely wasteful of public funds and resources, these are all aspects of the public interest at stake in this case.

In order to better understand these issues, some background information on Dr. Blackwell and his trial are set forth below.

Until he was convicted in 2005, Dr. Blackwell was a Professor of Marketing at Ohio State University. During his 39-year academic career he had written many books and received twenty-six teaching awards.

Because of his outstanding accomplishments, Dr. Blackwell was widely sought after as a business consultant and public speaker. He achieved an international reputation for his pioneering work in the field of Consumer Behavior. The textbook he wrote on this initiated the curriculum in consumer behavior. Because of his reputation, over the years he was a board member on some fifteen companies.

Throughout his distinguished career, Dr. Blackwell's ethics and integrity had never been questioned, nor had he ever been arrested.

In 1999, Dr. Blackwell was a member of the board of Worthington Foods, a local Columbus, Ohio company. On July 8th of that year, Kellogg Corporation began purchase discussions with Worthington. As a board member, Dr. Blackwell was a party to these discussions at special board meetings. Eventually, Worthington accepted Kellogg's offer, which was announced October 1, 1999.

In keeping with industry practice, the National Association of Securities Dealers (NASD) investigates all mergers and acquisitions. The NASD discovered that both the volume and price of Worthington Foods stock had increased significantly in the weeks

shortly before Kellogg initiated discussions with Worthington and in the week before the announcement of the agreement was made. As part of their inquiry, NASD provided a list of stock purchasers to Worthington's board members and asked that they identify anyone on the list with whom they might be acquainted.

Although response to this request was not mandatory, Dr. Blackwell fully complied with it, revealing that a dozen persons he knew had purchased stock during the negotiation period. NASD passed the information on to the SEC, which began an investigation of Worthington Foods board members and employees. For unknown reasons, the SEC appears not to have investigated Kellogg.

The SEC had a solid basis for conducting an investigation. It is a violation of federal law for board members to intentionally reveal material nonpublic information while merger negotiations are taking place. But while the investigation of Worthing Foods was a matter of standard practice, what is surprising is that it appears to have focused only on Worthington Foods and only on board member Blackwell, who did not profit at all from the stock trading, and that the SEC investigation dragged on for so long, resulting in both criminal and civil actions, at an expense that seems inordinate given the fact that several of those charged were acquitted, that while he was convicted Dr. Blackwell still maintains his innocence, and that in any event he did not profit from the trading transactions.

The enormous expenditure of time and money spent investigating Dr. Blackwell is surprising given his unblemished reputation, lack of personal profit from the trades, and other factors that should have emerged from even a cursory investigation. Such an investigation would have shown that Dr. Blackwell believed strongly in Worthington Foods and for many years had been its vocal advocate through his publications, classroom teaching, and public speaking. Moreover, friends and fellow board members were highly cognizant of the company and had historically purchased more stock than had general investors less familiar with it. Additionally, increased purchases were to be expected from those following the company's stock because the price of the stock fell some 30% over the negotiating period and was being touted by numerous Wall Street analysts.

Dr. Blackwell, a visible and strong public advocate of Worthington Foods was singled out by the SEC investigation, even when three other members of its board had more acquaintances purchasing stock during the negotiations period than he did.

After a long and costly delay, the SEC did not move forward with a civil action against Dr. Blackwell. Instead, it funded the assignment of the civil case prosecutor to the Justice Department so he could pursue a criminal investigation. As a result, a long and extensive FBI investigation ensued. This enabled the SEC to confront potential witnesses with the threat of criminal

prosecution, and to offer them immunity agreements if they were willing to testify that Dr. Blackwell had illegally tipped them. Full immunity was given to four persons: Blackwell's wife, who testified against him the day after they entered into a million dollar divorce settlement; his wife's parents; and a multi-millionaire business acquaintance of his.

Although four admitted inside traders were given full immunity, only two testified. The public achieved to ostensible quid pro quo for the two who did not testify. These were Dr. Blackwell's ex-wife's parents, who the government allowed to leave on an European "vacation" the week the trial began, and to return only after jury deliberations had begun. They both had earlier testified to the SEC that Dr. Blackwell had never spoken with them about their decision to purchase Worthington stock.

On June 20, 2005, Dr. Blackwell and one employee of Worthington and her husband were convicted of insider trading and related charges. The other three persons on trial were acquitted. Dr.

Blackwell, who did trade in the stock but made no money from it, was sentenced to six years in prison and fined \$1,000,000.

Dr. Blackwell believes that the information requested will help show that he was unjustly targeted and prosecuted for a crime he did not commit. He was targeted because of his wealth and public visibility, while those more likely to have been culpable escaped prosecution. As a result, he was forced to spend millions of dollars defending himself. Ultimately, those who were given immunity bought more stock and made more money than those who were convicted. This raises obvious questions of interest to the public about the purpose, integrity and competence of the investigation.

One of the issues raised is whether it is in the public interest to target an individual not on the basis of his culpability but because he is a more convenient target; that is, being wealthy, the government has a better chance of recovering a large sum of money from him; and being a prominent spokesman, prosecuting him sends a stronger message.

Another is whether the costs of prosecuting a person who made no money as a result of alleged illegal tipping outweigh the benefit to the public. Dr. Blackwell seeks an accounting of the costs of his prosecution and trial so that this aspect of the case may be properly evaluated.

A most important issue of great public interest is whether the SEC abused its power to grant immunity so as to procure testimony from persons who were themselves guilty of insider trading in order to convict the preferred target, who was not guilty, then compounded this abuse by not using two of these immunized witnesses--his ex-

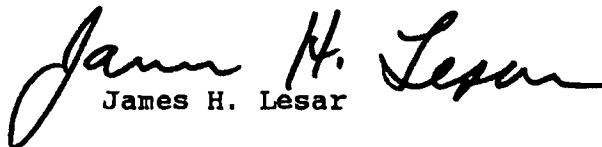
wife's parents--but allowing them to flee the jurisdiction of the court so Dr. Blackwell could not call them to testify.

Since the immunity agreements were critical to procuring witnesses to testify against him and desperately needed in order to convict him, Dr. Blackwell seeks to understand the basis for entering into agreements which let admitted felons go free from prosecution without obtaining any public benefit in exchange for their liberation. Were these witnesses properly vetted before they testified to the grand jury? Was any consideration given to the possibility that they were the only guilty parties and simply entered into immunity agreements to save their own necks without regard to the actual guilt or innocence of Dr. Blackwell?

Also germane to the proper functioning of the justice system is whether the government knew that the "vacation" of Dr. Blackwell's ex-wife's parents would coincide with the trial and colluded in it in order to preclude him from subpoenaing them as witnesses in his defense.

The unusual circumstances sketched above have prompted Dr. Blackwell to write a book about his experience with the justice system. It is in the public interest that issues he wishes to raise be documented to the maximum extent possible by full disclosure of the relevant documents. In light of these considerations, the public interest in disclosure far outweighs the privacy interests of the third parties who are the subjects of his request.

Sincerely yours,

  
James H. Lesar



**AUTHORIZATION AND PRIVACY WAIVER**

I, Roger Dale Blackwell, declare and say as follows:

1. I was born on the 7<sup>th</sup> day of August, 1940, at Humphreysville, Missouri.

2. My social security number is 488-40-8988

3. I currently reside at the Morgantown FCI in Morgantown, West Virginia. I previously resided at 1738 Fishhawk Run, in Upper Arlington, Ohio.

4. I hereby authorize any agency of the United States Government to release to my attorney, Mr. James H. Lesar, 10003 K Street, N.W., Suite 640, Washington, D.C. 20001, any and all records pertaining to me which he has requested on my behalf. Insofar as any release to Mr. Lesar is concerned, I waive any and all privacy rights which I have in said records.

5. I am the person identified in the preceding paragraphs and the signature subscribed below is my signature.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28<sup>th</sup> day of November, 2006.

  
ROGER DALE BLACKWELL

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

**Mr. David M. Hardy**  
**Chief, RIDS**  
**FBI Headquarters**  
**935 Pennsylvania Ave. NW**  
**Washington, D.C. 20535**

## 2. Article Number

(Transfer from service label)

7006 0100 0005 7589 7021

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

## A. Signature

**X**☐ Agent☐ Addressee

## B. Received by (Printed Name)

## C. Date of Delivery:

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

## 3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

## 4. Restricted Delivery? (Extra Fee)

☐ Yes

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 7006 0100 0005 7589 7021

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PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

Sent To **FBI RIDS Section**  
 Street, Apt. No. or PO Box No. **935 Pennsylvania, N.W.**  
 City, State, ZIP+4 **Washington, DC 20535**

PS Form 3800, June 2002 See Reverse for Instructions

JAMES H. LESAR  
ATTORNEY AT LAW  
1003 K STREET, N.W., SUITE 640  
WASHINGTON, D.C. 20001  
TELEPHONE (202) 393-1921  
FAX (202) 393-7310

October 2, 2007

**FREEDOM OF INFORMATION ACT REQUEST**

Special Agent in Charge  
Federal Bureau of Investigation  
P.O. Box 1277  
Cincinnati, OH 45201

**VIA CERTIFIED MAIL NO.  
7007 1490 0003 2162 9872**

Re: Request of Dr. Roger Blackwell

Dear Sir:

I represent Dr. Roger Blackwell. Dr. Blackwell is presently incarcerated in the Federal Correctional Institute at Morgantown, West Virginia. He was convicted on insider trading and related charges.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a, Dr. Blackwell requests the following records:

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2. All notes, memoranda, reports, correspondence, tran-

Exhibit 3

scripts, statements, tape recordings, communications or any other form of record pertaining to John ("Jack") Kahl.

3. All records at any of these specified locations (Headquarters, Cincinnati and other appropriate locations) which reflect costs incurred in undertaking the referenced investigation and prosecution, including any breakdowns of said costs.

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A privacy waiver authorizing you to release records pertaining to Dr. Blackwell to me is attached.

Given the fact that we have provided you with the specific criminal case number of the case to which the records sought relate, I believe that you should not have any difficulty searching for responsive records without the need for any further identifying information of the subjects of this request. Mr. Blackwell's identifying information is, of course, set forth in his attached privacy waiver. Additionally, I am presently able to provide you with the date of birth for John J. ("Jake") Kahl, which is September 20, 1940.

Dr. Blackwell's request includes records pertaining to third parties. I understand that you take the position that in order to obtain such materials we must show that the public interest in them overrides the privacy interest. Without question, this is the case.

There is a strong public interest in these materials because they will show the activities and operations of government agencies regarding a controversial prosecution of a highly regarded educator

and businessman on insider stock trading charges even though he personally received no profit from such trading, and in circumstances where (a) his wife, who testified against him at his trial the day after she agreed to a \$1,000,000 divorce settlement against him, did so to save her parents from prosecution by the SEC, (b) his wife's parents, who had previously told investigators that Dr. Blackwell did not provide them an insider tip, left the U.S. at the time of his trial on an European "vacation," thus avoiding being called as witnesses on his behalf, and (c) the prosecution used immunity from prosecution agreements to procure testimony against him. Whether the government's tactics led to convicting an innocent man while allowing guilty parties to escape punishment, whether its tactics were fair and objective or an abuse of prosecutorial power, whether its pursuit of Dr. Blackwell was hugely wasteful of public funds and resources, these are all aspects of the public interest at stake in this case.

In order to better understand these issues, some background information on Dr. Blackwell and his trial are set forth below.

Until he was convicted in 2005, Dr. Blackwell was a Professor of Marketing at Ohio State University. During his 39-year academic career he had written many books and received twenty-six teaching awards.

Because of his outstanding accomplishments, Dr. Blackwell was widely sought after as a business consultant and public speaker. He achieved an international reputation for his pioneering work in the field of Consumer Behavior. The textbook he wrote on this initiated the curriculum in consumer behavior. Because of his reputation, over the years he was a board member on some fifteen companies.

Throughout his distinguished career, Dr. Blackwell's ethics and integrity had never been questioned, nor had he ever been arrested.

In 1999, Dr. Blackwell was a member of the board of Worthington Foods, a local Columbus, Ohio company. On July 8th of that year, Kellogg Corporation began purchase discussions with Worthington. As a board member, Dr. Blackwell was a party to these discussions at special board meetings. Eventually, Worthington accepted Kellogg's offer, which was announced October 1, 1999.

In keeping with industry practice, the National Association of Securities Dealers (NASD) investigates all mergers and acquisitions. The NASD discovered that both the volume and price of Worthington Foods stock had increased significantly in the weeks shortly before Kellogg initiated discussions with Worthington and in the week before the announcement of the agreement was made. As part of their inquiry, NASD provided a list of stock purchasers to

Worthington's board members and asked that they identify anyone on the list with whom they might be acquainted.

Although response to this request was not mandatory, Dr. Blackwell fully complied with it, revealing that a dozen persons he knew had purchased stock during the negotiation period. NASD passed the information on to the SEC, which began an investigation of Worthington Foods board members and employees. For unknown reasons, the SEC appears not to have investigated Kellogg.

The SEC had a solid basis for conducting an investigation. It is a violation of federal law for board members to intentionally reveal material nonpublic information while merger negotiations are taking place. But while the investigation of Worthing Foods was a matter of standard practice, what is surprising is that it appears to have focused only on Worthington Foods and only on board member Blackwell, who did not profit at all from the stock trading, and that the SEC investigation dragged on for so long, resulting in both criminal and civil actions, at an expense that seems inordinate given the fact that several of those charged were acquitted, that while he was convicted Dr. Blackwell still maintains his innocence, and that in any event he did not profit from the trading transactions.

The enormous expenditure of time and money spent investigating Dr. Blackwell is surprising given his unblemished reputation, lack of personal profit from the trades, and other factors that should have emerged from even a cursory investigation. Such an investigation would have shown that Dr. Blackwell believed strongly in Worthington Foods and for many years had been its vocal advocate through his publications, classroom teaching, and public speaking. Moreover, friends and fellow board members were highly cognizant of the company and had historically purchased more stock than had general investors less familiar with it. Additionally, increased purchases were to be expected from those following the company's stock because the price of the stock fell some 30% over the negotiating period and was being touted by numerous Wall Street analysts.

Dr. Blackwell, a visible and strong public advocate of Worthington Foods was singled out by the SEC investigation, even when three other members of its board had more acquaintances purchasing stock during the negotiations period than he did.

After a long and costly delay, the SEC did not move forward with a civil action against Dr. Blackwell. Instead, it funded the assignment of the civil case prosecutor to the Justice Department so he could pursue a criminal investigation. As a result, a long and extensive FBI investigation ensued. This enabled the SEC to confront potential witnesses with the threat of criminal prosecution, and to offer them immunity agreements if they were willing to testify that Dr. Blackwell had illegally tipped them. Full immunity was given to four persons: Blackwell's wife, who

testified against him the day after they entered into a million dollar divorce settlement; his wife's parents; and a multi-millionaire business acquaintance of his.

Although four admitted inside traders were given full immunity, only two testified. The public achieved to ostensible quid pro quo for the two who did not testify. These were Dr. Blackwell's ex-wife's parents, who the government allowed to leave on an European "vacation" the week the trial began, and to return only after jury deliberations had begun. They both had earlier testified to the SEC that Dr. Blackwell had never spoken with them about their decision to purchase Worthington stock.

On June 20, 2005, Dr. Blackwell and one employee of Worthington and her husband were convicted of insider trading and related charges. The other three persons on trial were acquitted. Dr.

Blackwell, who did trade in the stock but made no money from it, was sentenced to six years in prison and fined \$1,000,000.

Dr. Blackwell believes that the information requested will help show that he was unjustly targeted and prosecuted for a crime he did not commit. He was targeted because of his wealth and public visibility, while those more likely to have been culpable escaped prosecution. As a result, he was forced to spend millions of dollars defending himself. Ultimately, those who were given immunity bought more stock and made more money than those who were convicted. This raises obvious questions of interest to the public about the purpose, integrity and competence of the investigation.

One of the issues raised is whether it is in the public interest to target an individual not on the basis of his culpability but because he is a more convenient target; that is, being wealthy, the government has a better chance of recovering a large sum of money from him; and being a prominent spokesman, prosecuting him sends a stronger message.

Another is whether the costs of prosecuting a person who made no money as a result of alleged illegal tipping outweigh the benefit to the public. Dr. Blackwell seeks an accounting of the costs of his prosecution and trial so that this aspect of the case may be properly evaluated.

A most important issue of great public interest is whether the SEC abused its power to grant immunity so as to procure testimony from persons who were themselves guilty of insider trading in order to convict the preferred target, who was not guilty, then compounded this abuse by not using two of these immunized witnesses--his ex-

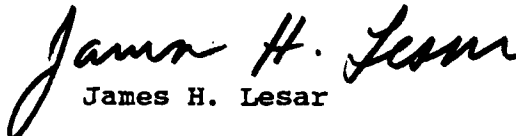
wife's parents--but allowing them to flee the jurisdiction of the court so Dr. Blackwell could not call them to testify.

Since the immunity agreements were critical to procuring witnesses to testify against him and desperately needed in order to convict him, Dr. Blackwell seeks to understand the basis for entering into agreements which let admitted felons go free from prosecution without obtaining any public benefit in exchange for their liberation. Were these witnesses properly vetted before they testified to the grand jury? Was any consideration given to the possibility that they were the only guilty parties and simply entered into immunity agreements to save their own necks without regard to the actual guilt or innocence of Dr. Blackwell?

Also germane to the proper functioning of the justice system is whether the government knew that the "vacation" of Dr. Blackwell's ex-wife's parents would coincide with the trial and colluded in it in order to preclude him from subpoenaing them as witnesses in his defense.

The unusual circumstances sketched above have prompted Dr. Blackwell to write a book about his experience with the justice system. It is in the public interest that issues he wishes to raise be documented to the maximum extent possible by full disclosure of the relevant documents. In light of these considerations, the public interest in disclosure far outweighs the privacy interests of the third parties who are the subjects of his request.

Sincerely yours,

  
James H. Lesar



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Mr. James H. LESAR  
1003 K Street, N.W.  
Suite 640  
Washington, DC 20001

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PS Form 3800, August 2006

See Reverse for Instructions



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

March 12, 2008

JAMES H. LESAR, ESQUIRE  
SUITE 640  
1003 K STREET, NW  
WASHINGTON, DC 20001

Request No: 1098610-000

Subject: BLACKWELL, ROGER DR.

Dear Requester:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently the FBI is searching for, retrieving, scanning, and evaluating files that may be responsive to your request. Many factors may contribute to the time required to process your request; however, the greatest single factor is the number of documents associated with your request.

Once your files have been evaluated as potentially responsive, your request will be forwarded to the "perfected backlog", where your request will wait for assignment to an analyst.

You may inquire as to the status of your request by calling the FBI's FOIPA Public Information Center at 540-868-4593.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David M. Hardy", is written over a horizontal line.

David M. Hardy  
Section Chief,  
Record/Information Dissemination Section  
Records Management Division

Exhibit 4



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

May 15, 2008

JAMES H. LESAR, ESQUIRE  
SUITE 640  
1003 K STREET, NW  
WASHINGTON, DC 20001

Request No: 1098610-000  
Subject: BLACKWELL, ROGER DR.

Dear Requester:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently the FBI is searching for, retrieving, scanning, and evaluating files that may be responsive to your request. Many factors may contribute to the time required to process your request; however, the greatest single factor is the number of documents associated with your request.

Once your files have been evaluated as potentially responsive, your request will be forwarded to the "perfected backlog", where your request will wait for assignment to an analyst.

You may inquire as to the status of your request by calling the FBI's FOIPA Public Information Center at 540-868-4593.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", followed by the initials "LH" and "H".

David M. Hardy  
Section Chief,  
Record/Information Dissemination Section  
Records Management Division

Exhibit 5



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

July 22, 2008

JAMES H. LESAR, ESQUIRE  
SUITE 640  
1003 K STREET, NW  
WASHINGTON, DC 20001

Request No: 1098610-000

Subject: BLACKWELL, ROGER DR.

Dear Requester:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently the FBI is searching for, retrieving, scanning, and evaluating files that may be responsive to your request. Many factors may contribute to the time required to process your request; however, the greatest single factor is the number of documents associated with your request.

Once your files have been evaluated as potentially responsive, your request will be forwarded to the "perfected backlog", where your request will wait for assignment to an analyst.

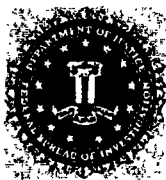
You may inquire as to the status of your request by calling the FBI's FOIPA Public Information Center at 540-868-4593.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned above the typed name of the sender.

David M. Hardy  
Section Chief,  
Record/Information Dissemination Section  
Records Management Division

Exhibit 6



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

July 31, 2008

MR. JAMES H. LESAR  
ATTORNEY AT LAW  
SUITE 640  
1003 K STREET, NW  
WASHINGTON, DC 20001

Request No.: 1098610  
Subject: BLACKWELL, ROGER DR.

Dear Requester:

This is in reference to your Freedom of Information-Privacy Acts (FOIPA) request.

We have located approximately 3,319 pages which are potentially responsive to your request. Pursuant to Title 28, Code of Federal Regulations (CFR), Sections 16.11 and 16.49, there is a duplication fee of ten cents per page. The first 100 pages will be provided to you free of charge. Regulations require us to notify requesters when anticipated charges exceed \$25, and if all of the pages are released, you will owe \$321.90 in duplication fees. Please remember this is only an estimate, and if some of the pages are withheld or are not identifiable with your subject, the actual charges could be less.

You may want to consider reducing the scope of your request. This would allow you to lower your costs and hasten the receipt of your information. To streamline our operation, we divide our requests into three tracks based on the amount of material to be processed: small (1-500 pages); medium (501-2500 pages) and large (2501 or more pages), with the small track having the fastest rate of processing. To accelerate the processing of your request, you must reduce the pages to be processed to 500 pages or less. Please let us know in writing if you are interested in discussing the possibility of reducing the scope of your request or if you are willing to pay the estimated duplication cost indicated in the above paragraph. Your written response should provide a telephone number where you can be reached between the hours of 8:00 a.m. and 5:00 p.m., EST. You may also fax your response to the following number: 540-868-4996, Attention: Work Processing Unit. You must include the FOIPA request number in any communication regarding this matter.

As stated previously, the cost indicated is only an estimate, therefore, no payment should be made at this time.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over the typed name.

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division

Exhibit 7



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

October 20, 2008

JAMES H. LESAR, ESQUIRE  
SUITE 640  
1003 K STREET, NW  
WASHINGTON, DC 20001

Request No: 1098610-000  
Subject: BLACKWELL, DR. ROGER

Dear Mr. Lesarr:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently your request is being reviewed by an analyst. The analyst will confirm that all records are responsive to your request and apply exemptions allowed under FOIPA. If your request is for sensitive national security information, then the records must undergo a systematic declassification review prior to application of FOIPA exemptions. Large requests take the longest time to be processed by an analyst.

You may inquire as to the status of your request by calling the FBI's FOIPA Public Information Center at 540-868-4593.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned above the typed name of the sender.

David M. Hardy  
Section Chief,  
Record/Information Dissemination Section  
Records Management Division

Exhibit 8



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

February 02, 2009

JAMES H. LESAR, ESQ.  
SUITE 640  
1003 K STREET, NW  
WASHINGTON, DC 20001

Request No: 1098610-000  
Subject: BLACKWELL, ROGER DR.

Dear Mr. Lesar:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently your request is being reviewed by an analyst. The analyst will confirm that all records are responsive to your request and apply exemptions allowed under FOIPA. If your request is for sensitive national security information, then the records must undergo a systematic declassification review prior to application of FOIPA exemptions. Large requests take the longest time to be processed by an analyst.

You may inquire as to the status of your request by calling the FBI's FOIPA Public Information Center at 540-868-4593.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned above the typed name of the sender.

David M. Hardy  
Section Chief,  
Record/Information Dissemination Section  
Records Management Division

Exhibit 9